

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

CR No. 475 of 2005

Date of decision: December 01, 2006.

Mohinder Singh

...**Petitioner(s)**

v.

Nem Chand Jain & Anr.

...**Respondent(s)**

Present: Shri R.C. Setia, Senior Advocate with
Shri Vishal Ranjan, Advocate for the petitioner.

Shri Puneet Jindal, Advocate for the respondents.

Surya Kant, J. (Oral)

This revision petition is directed against the order dated 6.11.2004 passed by the Rent Controller, Jalandhar whereby an application under Order 6 Rule 17 CPC, seeking amendment of the ejectment petition moved by the petitioner-landlord, has been dismissed.

The present ejectment petition was filed by the petitioner on the ground of 'personal necessity' in the year 1992. In 1993, he filed another ejectment petition on the ground of 'sub-letting' as well as 'personal necessity'. He succeeded before the Rent Controller on the ground of 'sub-letting', though, it is stated by Learned Counsel for the petitioner that the ground of 'personal necessity' was not pressed by him. The respondent-tenants preferred an appeal against the order of ejectment. During pendency of the said appeal, proceedings in the present ejectment petition (of the year

1992) were stayed. The tenants' appeal was finally allowed by the Appellate Authority vide judgment dated 26.7.2002. Against the said judgment, the petitioner-landlord has preferred a Revision Petition, which is stated to be pending in this Court.

The appeal preferred by the tenants having been decided on 26.7.2002, the proceedings in the present ejectment petition were revived. It is thereafter that the petitioner-landlord moved an application for amendment of the ejectment petition in order to elaborately plead the ground of “personal necessity”. The said application has been dismissed by the learned Rent Controller after observing that the facts are not required to be pleaded as the same could be proved by the petitioner by leading evidence, which has already been concluded and that the application is not based upon any subsequent events.

Learned Counsel for the petitioner has referred to the averments made in paragraph 5 of the un-amended petition as well as the proposed amendment which he has reproduced in the grounds of appeal.

After going through the averments made therein, it appears to me that the proposed amendment is based upon averments of past mixed as well as subsequent events and if the said amendment is allowed to be carried out, especially when the principle of *res judicata* is not attracted in respect of plea of “bona fide personal necessity”, no prejudice would be caused to the tenants. It is, however, true that the amendment application has been moved at a belated stage when the evidence has already been led. On that count, the respondent-tenants can be suitably compensated with costs.

For the reasons afore-mentioned, this revision petition is

allowed; the impugned order dated 6.11.2004 is set aside and the petitioner is directed to file the amended petition subject, however, to payment of costs of Rs.10,000/- i.e. Rs.5000/- each to the two respondent-tenants.

The parties are directed to appear before the trial court on January 07, 2007. The amended ejectment petition shall be filed by the petitioner on that day only and no further opportunity shall be granted to him in this regard.

Disposed of.

December 01, 2006.
kadyan

[**Surya Kant**]
Judge